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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,208

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Pascal Kocher

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KENYON & KENYON LLP
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NEW YORK, NY 10004

EXAMINER

WALK, SAMUEL J

ART UNIT

PAPER NUMBER

2612

MAIL DATE

DELIVERY MODE

02/19/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,208	Applicant(s) KOCHER, PASCAL	
	Examiner SAMUEL J. WALK	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 7-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Davidian (US 5357438).

7. A device for providing a fatigue warning to a driver in a controlled motor vehicle traveling on a roadway, comprising:

a driver sensor system for detecting a driver fatigue condition; and

an alarm system including an environment sensor system and a setting device, wherein the alarm system is configured to one of output a warning signal and perform a control action when a distance between the controlled motor vehicle and a preceding vehicle drops below a warning distance, the control action including controlling at least one of a drive system and a brake system of the controlled motor vehicle, and wherein the setting device of the alarm system configured to modify the warning distance as a function of the detected driver fatigue condition.

See Fig. 2 components 30a,b,c and 46 and Col. 5 lns 34-43; Fig. 6 components 12 and 14; Fig. 6B components 46,48,50,52, 54 and 97.

8. The device as recited in Claim 7, wherein the warning distance is defined by a setpoint time gap that represents a time interval between the preceding vehicle and the controlled motor vehicle passing the same point on the roadway. It is inherent that a time gap would be required

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in an equation to determine the rate of distance decrease.

9. The device as recited in Claim 7, further comprising:

an operator's control element assigned to the setting device, the operator's control element enabling the driver to manually set one of the warning distance and the setpoint time gap; wherein the setting device is configured to override the one of the warning distance and the setpoint time gap manually set by the driver, depending on the detected driver fatigue condition.

As cited above, the setting is performed by the driver prior to operation, see Col. 5 lns 34-43.

10. The device as recited in Claim 8, further comprising:

an operator's control element assigned to the setting device, the operator's control element enabling the driver to manually set one of the warning distance and the setpoint time gap; wherein the setting device is configured to override the one of the warning distance and the setpoint time gap manually set by the driver, depending on the detected driver fatigue condition.

See above rejection in reference to Claim 9.

11. The device as recited in Claim 9, wherein one of the warning distance and the setpoint time gap may be manually set with the aid of the operator's control element only within predefined limits, and wherein the setting device is configured to increase one of the warning distance and the setpoint time gap beyond the predefined limits if a driver fatigue condition is detected. See above rejection in reference to Claim 9.

12. The device as recited in Claim 10, wherein one of the warning distance and the setpoint time gap may be manually set with the aid of the operator's control element only within predefined limits, and wherein the setting device is configured to increase one of the warning distance and the etpoint time gap beyond the predefined limits if a driver fatigue condition is detected. See

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above rejection in reference to Claim 9.

13. The device as recited in Claim 8, wherein the driver sensor system is configured to output a parameter that quantitatively defines the driver fatigue condition, and wherein the setting device is configured to increase one of the warning distance and the setpoint time gap according to a monotonically increasing function of the parameter. See above rejection in reference to Claim 9.

14. The device as recited in Claim 9, wherein the driver sensor system is configured to output a parameter that quantitatively defines the driver fatigue condition, and wherein the setting device is configured to increase one of the warning distance and the setpoint time gap according to a monotonically increasing function of the parameter. See above rejection in reference to Claim 9.

15. The device as recited in Claim 13, wherein the alarm system is configured to be activated automatically when a driver fatigue condition is detected. It is inherent that an alarm would be automatic in response to an alarm condition as it provides the fastest and safest response.

16. The device as recited in Claim 14, wherein the alarm system is configured to be activated automatically when a driver fatigue condition is detected. See above rejection in reference to Claim 15.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL J. WALK whose telephone number is (571)272-2960.

The examiner can normally be reached on M-F: 8:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Lee can be reached on (571) 272-2960. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel J. Walk/
Examiner, Art Unit 2612